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REALNETWORKS, INC.

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

14 APPLE COMPUTER, INC.,

15 Plaintiff,

16 v.

17 BURST.COM, INC.,

18 Defendant.

Case No. 06-CV-00019 MHP

Case No. 08-CV-0023 WDB

**ADMINISTRATIVE MOTION TO  
CONSIDER WHETHER CASES SHOULD  
BE RELATED PURSUANT TO CIVIL  
LOCAL RULE 3-12**

22 REALNETWORKS, INC.,

23 Plaintiff,

24 v.

25 BURST.COM, INC.,

26 Defendant.

28  
Administrative Motion to Consider  
Whether Cases Should Be Related

1 Plaintiff RealNetworks, Inc. ("RealNetworks") submits this stipulated Administrative  
2 Motion to Consider Whether Cases Should Be Related pursuant to Civil Local Rules 3-12 and 7-  
3 11. All parties stipulate that these are related cases that should be re-assigned to Judge Patel  
4 based on Judge Patel having presided in the earlier-filed case involving the same patents and one  
5 of the same parties. A copy of the parties' Stipulation pursuant to Civil Local Rule 7-11 is filed  
6 with this Administrative Motion.

7 The pending case, *RealNetworks, Inc. v. Burst.com, Inc.*, Case No. 08-CV-0023 WDB  
8 ("RealNetworks Litigation"), was filed on January 3, 2008 and assigned to Magistrate Judge  
9 Wayne D. Brazil. RealNetworks respectfully submits that the RealNetworks Litigation is related  
10 to a recently-terminated declaratory judgment action adjudicated in the United States District  
11 Court for the Northern District of California captioned *Apple Computer, Inc. v. Burst.com, Inc.*,  
12 Case No. 06-CV-00019 MHP ("Apple Litigation") that was settled and dismissed on December  
13 4, 2007.

14 The RealNetworks Litigation and Apple Litigation "concern substantially the same  
15 parties, property, transaction or event," and "it appears likely that there will be an unduly  
16 burdensome duplication of labor and expense or conflicting results if the cases are conducted  
17 before different Judges." Accordingly, these cases are "related" within the meaning of Civil L.R.  
18 3-12(a) for the following reasons:

19 First, these cases are both declaratory judgment patent actions seeking a judgment of non-  
20 infringement, patent invalidity and/or patent unenforceability of the same patents -- U.S. Patent  
21 Nos. 4,963,995 ("995 patent"), 5,164,839 ("839 patent"), 5,995,705 ("705 patent"), and  
22 5,057,932 ("932 patent").

23 Second, Burst.com, Inc. is the declaratory judgment defendant and purported owner of  
24 the patents-in-suit in both cases.

25 Third, Judge Patel already conducted a Markman Hearing, construed the patents-in-suit,  
26 issued a Claim Construction Order, and decided summary judgment motions declaring that  
27 several claims of the patents-in-suit are invalid in the Apple Litigation.

1 For the reasons set forth above, it appears likely that there will be an unduly burdensome  
2 duplication of judicial resources and potentially conflicting results if the pending RealNetworks  
3 Litigation is conducted before a different judge than presided in the Apple Litigation.  
4 Accordingly, RealNetworks respectfully requests that the Court find that the RealNetworks  
5 Litigation is related to the Apple Litigation under Local Rule 3-12, and direct the Clerk to  
6 reassign the RealNetworks Litigation pursuant to Local Rule 3-12(f)(3). A proposed order is  
7 attached hereto.

8  
9 DATED: January 10, 2008

Respectfully submitted,

11 By: /s/ Robert F. Kramer  
12 Robert F. Kramer

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REALNETWORKS, INC.

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION

16 APPLE COMPUTER, INC.,  
17 Plaintiff,  
18 v.  
19 BURST.COM, INC.,  
20 Defendant.

Case No. 06-CV-00019 MHP

Case No. 08-CV-0023 WDB

**[PROPOSED] ORDER GRANTING  
REALNETWORKS, INC.'S  
ADMINISTRATIVE MOTION TO  
CONSIDER WHETHER CASES SHOULD  
BE RELATED PURSUANT TO CIVIL  
LOCAL RULES 3-12 AND 7-11**

23 REALNETWORKS, INC.,  
24 Plaintiff,  
25 v.  
26 BURST.COM, INC.,  
27 Defendant.  
28

[Proposed] Order Re Related Cases

1  
2 RealNetworks has filed with the Court an Administrative Motion To Consider Whether  
3 Cases Should Be Related under Civil Local Rules 3-12 and 7-11. Defendant Burst.com has  
4 stipulated that these cases are related and does not oppose RealNetworks' Administrative  
5 Motion. The Court has considered RealNetworks' Administrative Motion and all related  
6 briefing, and the parties Stipulation, and the Court finds that the motion should be granted.  
7

8 Accordingly, IT IS HEREBY ORDERED that these two cases are "related" within the  
9 meaning of Civil Local Rule 3-12. The Clerk is directed to reassign *RealNetworks, Inc. v.*  
10 *Burst.com, Inc.*, Case No. 08-CV-0023, to the undersigned Judge pursuant to Local Rule 3-  
11 12(f)(3).  
12

13 DATED: \_\_\_\_\_, 2008  
14  
15

16 \_\_\_\_\_  
17 The Honorable Marilyn Hall Patel  
18 United States District Court Judge  
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